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CASE NO. 92-515
CASE NO. 92-568

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

STATE OF WISCONSIN,

Petitioner,

v.

TODD MITCHELL,

Respondent.

STATE OF OHIO,

Petitioner,

v.

DAVID WYANT, *ET AL.*,

Respondents.

On Petitions for Writ of Certiorari
to the Supreme Courts of Wisconsin and Ohio

BRIEF OF *AMICI CURIAE* THE ANTI-DEFAMATION LEAGUE, ET AL. IN SUPPORT OF PETITIONS FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a criminal statute providing enhanced penalties where a victim is selected "because of" or "by reason of" his or her actual or perceived race, religion, color, disability, sexual orientation, national origin or ancestry is unconstitutional under the First Amendment.

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2. TO CLARIFY THE BASIS UNDER WHICH OTHER ANTI-DISCRIMINATION LAWS COMPORT WITH THE FIRST AMENDMENT; AND

3. TO RESOLVE A CONFLICT AMONG STATE COURTS ON A SUBSTANTIAL QUESTION OF FEDERAL CONSTITUTIONAL LAW

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INTEREST OF THE *AMICI CURIAE*

A. The Anti-Defamation League

The Anti-Defamation League ("ADL") is one of the nation's oldest civil rights organizations, founded in 1913 to promote good will among all races, ethnic groups and religions. As set out

in its charter, ADL's "ultimate purpose is to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." For almost 80 years, ADL has been active in the fight against discrimination in employment, housing, education, and public accommodations. ADL also believes very strongly that the First Amendment embodies core civil rights that are essential to ADL's ultimate purpose. ADL is acutely aware that the war against racial hatred and religious intolerance must be waged in a manner that neither threatens nor impinges upon First Amendment freedoms.

After three consecutive years in which ADL's annual audit of anti-Semitic incidents revealed a dramatic increase in anti-Semitic violence nationwide, ADL developed a program in 1981 designed to counteract anti-Semitic and racist hatred and violence. Media exposure, education, and more effective law enforcement are important features of the campaign, but the cornerstone of ADL's program is the staunch support of so-called "hate crime" legislation providing enhanced penalties for certain crimes when they are committed by reason of the victim's actual or perceived race, religion, sexual orientation, or national origin. ADL has a direct interest in *State v. Mitchell*, Case No. 92-515, and *State v. Wyant, et al.*, Case No. 92-568, because the statutes set aside in both cases as unconstitutional were based on a model "hate crimes" bill drafted by ADL's Legal Affairs Department and first published by ADL in 1981.[1]

ADL offers the perspective of a national organization, intimately and tirelessly involved in the promotion of penalty enhancement hate crime legislation, in urging the Court to grant certiorari in both *Mitchell* and *Wyant*. These decisions by the Supreme Courts of Wisconsin and Ohio, improperly relying upon *R.A.V. v. City of St. Paul, Minnesota*, ___ U.S., ___, 112 S. Ct. 2538 (1992), have cast a dark shadow of constitutional confusion and doubt – not only on the hate crime statutes now

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1. As explained further herein, in order to ensure that ADL's Model Bill did not run afoul of the First Amendment, ADL utilized language from various civil rights statutes had been upheld as constitutional. The original bill has undergone minor revisions since 1981, but its essence is unchanged.

in effect in 46 states and the District of Columbia (more than half of which are either based on or similar to ADL's Model Bill) – but also on proposed federal hate crime legislation presently under consideration in Congress. Certiorari must be granted to resolve this doubt and to provide essential guidance to perplexed legislators and law enforcement officials around the country. ADL firmly believes that most hate crime laws now in effect are consistent with the First Amendment, both on their face and as enforced. But unless the doubt and confusion on this point are resolved by the Court, the fight against ethnic intolerance and racist violence will be deprived of an essential weapon.

B. Additional *Amici Curiae*

The following organizations, listed alphabetically, join the ADL as *Amici Curiae* in urging the Court to grant the Petitions for Certiorari in *Mitchell* and *Wyant*. The interests of each such organization in *Mitchell* and *Wyant* are provided in Appendices A – M hereto:

Appendix	Organization
A	The American Jewish Congress
B	The Center for Women Policy Studies
C	The Fraternal Order of Police
D	The Human Rights Campaign Fund
E	The National Council of Jewish Women
F	The National Gay and Lesbian Task Force
G	The National Institute Against Prejudice & Violence
H	The National Jewish Community Relations Advisory Council
I	The National Organization of Black Law Enforcement Executives
J	The Organization of Chinese Americans
K	The Police Executive Research Forum
L	The Southern Poverty Law Center
M	The United States Conference of Mayors

SUMMARY OF THE ARGUMENT

Crimes in which the victim is selected because of his or her actual or perceived race, religion, color, disability, sexual orientation, national origin or ancestry are a problem of national scope. All indications are that such "hate crimes" are on the rise. In response, 46 states and the District of Columbia have enacted statutes which seek to redress hate crimes. Proposed federal legislation is under consideration in Congress. Certain legislators, law enforcement officials and a segment of the general population apparently believe that *R.A.V. v. City of St. Paul, Minnesota*, ___ U.S. ___, 112 S. Ct. 2538 (1992), vitiated all such hate crime statutes, although the Supreme Court did not intend to do so. State courts considering hate crime laws in the wake of *R.A.V.* are taking diametrically opposed positions on the question of whether such laws comport with the First Amendment. The validity of other time honored anti-discrimination laws is being questioned because of their marked similarity to the hate crime statutes at issue in these cases.

Amici urge the Court to grant Certiorari in *State v. Mitchell*, Case No. 92-515, and *State v. Wyant*, Case No. 92-568, to provide badly needed guidance to state and federal legislators, to resolve the conflict among state courts on the constitutionality of hate crime legislation, and to confirm the basis under which other anti-discrimination laws comport with the First Amendment.

ARGUMENT

I. HATE CRIMES: A NATIONAL PROBLEM

In a suburb of Washington, D.C., two white men assault a black woman walking toward a shopping mall, rip off her clothes, douse her with lighter fluid and, yelling "nigger," threaten to set her on fire.[2] In the Crown Heights neighborhood of Brooklyn, New York, a mob's cries of "Kill the Jew" echo through the

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2. Twomey, Steve, *A Night of Hate in Wheaton*, Washington Post, March 5, 1992.

streets before a 29-year-old Jewish scholar is stabbed to death.[3] In Kentucky, a group of assailants beat a young gay man with a tire iron and lock him in a car trunk full of snapping turtles, leaving him with severe brain damage.[4] A riot erupts in Los Angeles, California after four white police officers are acquitted of illegally beating a black motorist, and, in the midst of the chaos, a group of black rioters pull a white motorist from his truck and viciously beat him. A young black man is struck by a car and murdered after a gang of young white men chase him onto a highway in a Queens, New York neighborhood called Howard Beach.

Like a recurring nightmare, Americans in every part of the country have awakened to these and a host of similar headlines in the past few years. And unfortunately, the racial, ethnic and anti-homosexual motivated crimes that make the headlines are but the tip of the iceberg of a national problem. Less publicized are the thousands of less sensational incidents of assault, battery, threats and vandalism prompted by the same animus.

The conduct targeted by the legislation at issue in *Mitchell* and *Wyant* is a distinct breed of criminal behavior, rooted in a set of motives unlike those that prompt conventional criminal acts. These are not incidents where a criminal – in the course of a burglary or a mugging – realizes his victim's minority status and utters a racist or anti-Semitic remark. These are crimes where the victim is selected *because* of his or her actual or perceived status; where the racial, religious or similar animus is the *reason* for the crime. And while such crimes are assuredly an ugly chapter in America's past, they cannot be relegated to the history books. There is every indication that violence prompted by the race, religion, ethnicity, sexual orientation or national origin of the victim is on the rise.

ADL has been closely tracking one type of hate crime – anti-Semitic violence and vandalism – since 1960. Broadening

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3. On the night of August 19, 1991, following the tragic accidental death of a black child in an automobile mishap, a group of young rioters stabbed Yankel Rosenbaum, who died late in a local hospital.

4. Peirce, Neal R., *Recurring Nightmare of Hate Crimes*, National Journal, December 15, 1990, at Section State of the States.

its efforts, ADL began publishing in 1979 an annual "Audit of Anti-Semitic Incidents" based on data reported to ADL regional offices around the country. The Audits conducted over the first three years revealed a substantial increase in anti-Semitic vandalism and violence. From 1982 to 1986, ADL's Audits revealed a general downward trend in such incidents. Suddenly, in 1987, the number of anti-Semitic incidents began to spiral upward. There was a 17% increase in anti-Semitic incidents in 1987 over 1986. For the next five years, the upward spiral continued, culminating last year with the highest total ever reported to ADL – 1,879 separate incidents of anti-Semitic violence, vandalism and harassment reported from 42 states and the District of Columbia.

The reported incidents included several fire-bomb and arson attacks on synagogues in California, Jewish cemetery desecrations in nine states and hundreds of assault incidents throughout the country. Most disturbing was the fact that for the first time since the Audits began, there were more attacks on Jewish individuals than against synagogues and property. The number of physical assaults in 1991 was double the number reported in 1990.

Hate crimes focused on other minorities are also on the rise. Recently, *Amicus Curiae* the United States Conference of Mayors sent a survey on hate crimes to over 1,000 cities. Between 1990 and 1991, incidents of hate violence increased in 36% of the responding cities and remained the same in 58%. Only 6% of the responding cities reported a decrease.[5] Data collected pursuant to various states' hate crime reporting regulations indicate a dramatic increase in hate crimes between 1990 and 1991 in Connecticut, Massachusetts and New Jersey, with Florida also reporting a rise. *Amicus Curiae* the National Gay and Lesbian Task Force reported 7,031 incidents of anti-homosexual violence in 1989.[6] A recent report revealed a 31%

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5. *Addressing Racial and Ethic Tensions: Combatting Hate Crimes in America's Cities,* United States Conference of Mayors, Anti-Defamation League, June 1992.

6. *Anti-Violence Project, National Gay and Lesbian Task Force, Anti-Gay Violence, Victimization and Defamation in 1989* (1990). See also, Note, *Developments in the Law – Sexual Orientation and the Law*, 102 Harv. L.

increase in attacks on gay and lesbian individuals in each of five major metropolitan areas in 1991 over 1990.

II. PENALTY ENHANCEMENT HATE CRIME LEGISLATION: AN ESSENTIAL WEAPON IN THE FIGHT AGAINST HATE VIOLENCE

Amici recognize that hatred cannot be legislated out of existence and the long term solution to racism and ethnic bigotry is education and experience. Without a doubt, however, legislation that increases the penalty for hate crimes has been a powerful tool in redressing the problem.[7] Penalty enhancement hate crime legislation is key to the nationwide campaign against hate violence and vandalism. 46 states have now enacted some form of hate crime legislation, more than half of them based upon or similar to ADL's model penalty enhancement approach.[8]

The type of hate crime legislation sponsored by ADL since 1981 and upon which the statutes in *Mitchell* and *Wyant* are based centers on the principle of penalty enhancement. The concept is a simple one: bigoted thoughts or speech are not punished; each of the *Amici* believes very deeply in freedom of

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Rev. 1508, 1541–42 (1989).

7. The extent and national scope of the problem has prompted legislatures, law enforcement authorities and various organizations around the country to take a variety of other actions. For example, in 90, President Bush signed into law the Hate Crimes Statistics Act ("HCSA"), P.L. 101-275, which requires the Justice Department to acquire data on the hate crimes and to publish an annual summary of findings. This data is collected through the FBI's Uniform Crime Reporting Program, encompassing 16,000 state and local law enforcement agencies.

8. ADL's Model Bill provides as follows:

> A. A person commits the crime of intimidation if, by reason of the actual or perceived race, color, religion, national origin or sexual orientation of another individual or group of individuals, he violates Section ____ of the Penal Code (insert code provision for criminal trespass, criminal mischief, harassment, menacing, assualt and/or other appropriate statutorily prescribed criminal conduct).
>
> B. Intimidation is a ____ misdemeanor/felony (the degree of the criminal liabilty should be at least one degree more serious that that imposed for commission of the offense).

speech and thought – to borrow the words of Justice Holmes, this includes "freedom for the thought we hate."[9] Rather, it is only when the victim of a crime is selected "because of" or "by reason of" his or her minority status that the prosecutor may seek a stepped up penalty. And it is only the criminal act that is punished. Significantly, before the increased penalty can be imposed, the prosecution must prove, beyond a reasonable doubt, that the crime was bias-motivated.

This type of legislation serves several important purposes, squarely within the power and responsibility of state and local governments (and the federal government):

First and foremost, hate crime legislation embodies a crucial policy decision to recognize and address seriously the hate crime phenomenon. In terrorizing their victims and instilling fear and anxiety in the community, hate crimes are like other crimes. However, because of the unique and perverse motives that prompt them, hate crimes tear at the fragile bonds that hold together America's diverse and eclectic society. They not only intimidate and threaten the individual victim but also entire communities, making large sections of the population feel vulnerable and unprotected by the law. Hate crimes thus provoke retaliation and lawlessness, perpetuating a cycle of fear and mistrust between communities. Hate crime laws ensure that the targeted group perceives that law enforcement officials take their concerns seriously. By enforcing these laws, an isolated incident is less likely to create anxiety in the wider community; the potential of an incident to erupt into a widespread disturbance is minimized.

Second, law enforcement authorities believe these laws have a deterrent effect by making it clear that hate crimes will be considered particularly serious and will be dealt with accordingly. While there have been no studies on the point, it is apparent that law enforcement officials deeply appreciate the deterrent effect of hate crime laws. For example, when it became apparent that the Court's decision in *R.A.V.* was being misunderstood by large segments of the population to vitiate all

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9. *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting).

hate crime laws, Chicago's Police Superintendent, the United States Attorney, the Cook County State's Attorney and various other Chicago law enforcement officials felt that they needed to hold a rare and widely publicized press conference to send the signal that there was no "window of opportunity" for bigots.[10]

Finally and simply, the penalty enhancement concept allows society to redress a unique type of wrongful conduct in a manner that reflects its seriousness. It is within the power of government to give such crimes the special treatment that they deserve. As aptly explained by the Supreme Court of Oregon in its recent decision upholding the Oregon hate crime law and specifically disagreeing with the decision in *Mitchell*,

> Such crimes – because they are directed not only toward the victim but, in essence, toward an entire group of which the victim is perceived to be a member – invite imitation, retaliation, and insecurity on the part of the persons in the group to which the victim was perceived by the assailants to belong. Such crimes are particularly harmful, because the victim is attacked on the basis of characteristics, perceived to be possessed by the victim, that have historically been targeted for wrongs. Those are harms that the legislature is entitled to proscribe and penalize by criminal laws.

State v. Plowman, 314 Ore. 157, ____ P.2d ____, 1992 WL 207677 at *5 (1992).

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10. Sandberg, Michael A., *No Window of Opportunity for Bigots*, ADL On the Frontline, September 1992, at 5.

III. STATEMENT OF THE CASE

Amici Curiae adopt the Statements of the Case in the Petitions for Certiorari submitted in *Mitchell* and *Wyant*.

IV. CERTIORARI SHOULD BE GRANTED IN *STATE v. MITCHELL* AND *STATE v. WYANT*:

1. TO PROVIDE BADLY NEEDED GUIDANCE TO STATES AND THE FEDERAL GOVERNMENT ON THE CONSTITUTIONALITY OF PENALTY ENHANCEMENT HATE CRIME LEGISLATION;

2. TO CLARIFY THE BASIS UNDER WHICH OTHER ANTI-DISCRIMINATION LAWS COMPORT WITH THE FIRST AMENDMENT; AND

3. TO RESOLVE A CONFLICT AMONG STATE COURTS ON A SUBSTANTIAL QUESTION OF FEDERAL CONSTITUTIONAL LAW.

Amici firmly believe that the Supreme Court did not intend to abrogate the laws now in effect in a majority of states (and presently under consideration in Congress) that increase penalties for bias-motivated crimes. In *Dawson v. Delaware*, ___ U.S. ___, 112 S. Ct. 1093 (1992), and *Barclay v. Florida*, 463 U.S. 939 (1983), the Court explained that evidence of racial intolerance is a valid factor in sentencing a defendant, "where such evidence [is] relevant to the issues involved:"

> [T]he Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment.

Dawson, 112 S. Ct. at 1097.

Similarly, in *R.A.V.*, *supra*, the Court made clear that conduct is not shielded from regulation merely because it may "express" a discriminatory idea or philosophy (where such conduct is not targeted on the basis of its expressive content). 112 S. Ct. at 2546-47. Unlike the St. Paul, Minnesota ordinance involved in *R.A.V.*, ADL's recommended approach, embodied

in the Wisconsin and Ohio statutes at issue in *Mitchell* and *Wyant*, does not target conduct on the basis of its expressive content but targets conduct already defined as criminal.[11] Penalties are enhanced – not because of any message or thought conveyed through the crime – but because a particularly heinous motive prompted the selection of the victim, and because society has an interest in minimizing the potentially wide-ranging effects of this type of crime.

To the extent that a racial or anti-Semitic assault or a "gay-bashing" express certain "thoughts" or "beliefs," the penalty enhancement approach is admittedly a form of "content discrimination." However, since penalties are enhanced for actions already defined as criminal, "the nature of the content discrimination is such that there is no realistic possibility that official suppression of ideas is afoot." *R.A.V.*, 112 S. Ct. at 2547. Under the penalty enhancement approach, it is criminal conduct that is sought to be "suppressed," not the ideas or philosophies that prompt hate crimes. As the Court acknowledged in *R.A.V.*, "We have long held, for example, that nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses." *R.A.V.*, 112 S. Ct. at 2544. *Cf. Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984) ("like violence or other types of potentially expressive activity that produce special harms distinct from their communicative impact, such practices are entitled to no constitutional protection"). In the words of this Court,

> From 1791 to the present, however, our society, like other free but civilized societies, has permitted restrictions upon the content of speech in a few limited areas, which are 'of such slight social value as a step to truth that any benefit

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11. The *Amici* did not all agree that the St. Paul ordinance at issue in *R.A.V.* was constitutional. ADL, for example, filed a brief in *R.A.V.*, supporting the City of St. Paul's position. (ADL acknowledged, however, that the St. Paul ordinance – in sanctioning a racist and bigoted messages rather than enhancing penalties for bias-motivated crimes – was not ADL's recommended approach. ADL believed the St. Paul ordinance was constitutional only because the Minnesota Supreme Court limited its applicability to "fighting words"). All of the *Amici* herein agree that the statute at issue in *Mitchell* and *Wyatt* comport with the First Amendment.

> that may be derived from them is clearly outweighed by the social interest in order and morality.'

R.A.V., 112 S. Ct at 2542-43.

The Wisconsin and Ohio statutes do not punish "speakers who express views on disfavored subjects," *R.A.V.*, 112 S. Ct. at 2547, or attempt to "drive certain ideas or viewpoints from the marketplace." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, ___ U.S. ___, 112 S. Ct. 501, 508 (1991). These and other penalty enhancement hate crime statutes leave racists and bigots free to think, speak, believe and express their views within the full range of permitted conduct under the First Amendment.

Despite the Court's careful language in *R.A.V.* (and other decisions such as *Dawson* and *Barclay*), commentators, courts, law enforcement authorities and a large segment of the general population have been left utterly confused about the impact of *R.A.V.* on the hate crime laws in effect in 46 states and the District of Columbia. The Supreme Court's decision in *R.A.V.* was widely reported in the media as potentially jeopardizing all hate crime laws.[12] For example, the Boston Globe reported, "The *[R.A.V.]* ruling calls into question the hate crime laws adopted nationwide during the past decade. . . . its eventual impact remains unclear."[13] The *Washington Post* reported, "The Supreme Court yesterday unanimously struck down a St. Paul, Minn., hate crimes law, casting doubt on the constitutionality of scores of other state and local laws . . ."[14] One scholar noted that "*[i]*t's going to be very difficult for elected officials, and maybe even the lawyer retained to give them advice, to say with certainty what can be prohibited and what cannot."[15]

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12. Freeman, Steven M., *Hate Crimes: They're Still Against the Law*, ADL On the frontline, September 1992, at B-1.

13. Lehr, Dick, *High Court Overturns 'Hate Crime' Ordinance*, Boston Globe, June 23, 1992, at National/Foreign 1.

14. Marcus, Ruth, *Supreme Court Overturns Law Barring Hate Crimes; Free Speech Ruling Seen as Far-Reaching*, Washington Post, June 23, 1992, at A-1.

15. Campbell, Geoffrey A., *Supreme Court Rejects St. Paul Ordinance Banning Hate Speech; Gives No Guidance*, Bond Buyer, June 23, 1992, at 2.

Most disturbing has been the impact on those law enforcement authorities dedicated to enforcing hate crime laws. After the *R.A.V.* decision was handed down, certain of ADL's regional offices reported that police officers were declining to take hate crimes reports because they thought that the statutes were no longer constitutional.[16] The *Wall Street Journal* reported: "Confusion over the constitutionality of hate-crime statutes has made some law-enforcement officials and judges wary about enforcing the laws, even though many would likely survive court challenges."[17] According to the *Wall Street Journal*, "the misunderstandings have led attorneys general in Minnesota and Massachusetts to plan a mailing to law enforcement officers and district attorneys reminding them that they should continue to enforce hate-crime laws."[18]

The House Judiciary Subcommittee on Crime and Criminal Justice held hearings on the impact of *R.A.V.* on the proposed federal hate crime legislation at which several constitutional scholars testified.[19] As aptly summarized by Congressman

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16. Sandberg, Mitchell A., *No Window of Opportunity for Bigots*, ADL On the Frontline, September 1992, at 5. Many callers on talk radio shows believed that the Supreme Court had gone so far as to declare perfectly lawful the midnight cross-burning by a white teenager on the lawn of a black family in a primarily white St. Paul, Minnesota neighborhood.

17. Hetter, Katia, *Enforcers of Hate-Crime Laws Wary After High Court Ruling*, Wall Street Journal, August 13, 1992, at B-1.

18. Hetter, *supra* at n. 17.

19. The proposed federal law, H.R. 4797, provides:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hate Crimes Sentencing Enhancement Act of 1992".

SECTION 2. DIRECTION TO COMMISSION.

(a) IN GENERAL—Pursuant to section 994 of title 28, United Stated Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that are hate crimes. In carrying out this section, the United States Sentencing Commission shall assure reasonable consistency with other guidelines, avoid duplicative punishments for substantially the same offense, and take into account any mitigating circumstances which might justify exceptions.

(b) DEFINITION.—As used in this Act, the term "hate crimes" is a crime in which the defendant's conduct was motivated by hatred, bias, or prejudice,

Charles E. Schumer in his opening remarks at the hearing,

> [T]he efforts of the States and the Federal Government have been thrown into turmoil in the wake of the Supreme Court's recent decision in *R.A.V. v. The City of St. Paul*. That decision raised almost as many questions as it answered. Are all hate crimes statutes unconstitutional? Are hate crimes sentencing enhancement statutes unconstitutional? The *R.A.V.* decision is already having a substantial impact on courts that are attempting to grapple with these questions.

While some of the scholars and practitioners who testified believed that the proposed House bill did not run afoul of the First Amendment in light of *R.A.V.*, some had serious doubts and some expressed the view that the bill would be held unconstitutional.

If the Petitions for Certiorari in *Mitchell* and *Wyant* are granted, the Court can render clear answers to these questions, provide badly needed guidance to state and federal governments and law enforcement officials, and curtail what will surely be long, expensive and frustrating litigation on the "meaning" of *R.A.V.* as respects other hate crime laws.

Amici urge the Court to grant the Petitions in both cases, rather than to select one as more deserving of consideration than the other. By considering both cases, the Court will be in a better position to resolve once and for all certain of the First Amendment issues that have arisen under hate crime laws. The impact of constitutional considerations on a wider variety of underlying facts and circumstances can be analyzed. Certain differences in the statutory language adopted in Wisconsin and Ohio can also be addressed. In sum, more meaningful and useful guidance will be provided to legislators, courts and law enforcement authorities in 46 states by considering both *Mitchell* and *Wyant*.

NOTES *(Continued)*

based on the actual or perceived race, color, religion, national origin, ethnicity, gender,or sexual orientation of antoehr individual or group of individuals.

Petitioners in their respective Briefs have provided excellent arguments for the granting of Certiorari, and *Amici* will not burden the Court by repeating their arguments here. We emphasize, however, that three immediate and disastrous consequences of the *R.A.V.* decision's misinterpretation will be rectified if the Court grants the Petitions for Certiorari in *Mitchell* and *Wyant*:

THE COURT CAN REINSTATE THE WISCONSIN AND OHIO STATUTES AND PREVENT SIMILAR MISINTERPRETATIONS OF *R.A.V.* IN OTHER STATES

First, the Court can right the course of hate crime legislation in the states of Wisconsin and Ohio, and prevent the potential derailment of hate crime legislation in other states. Because the Supreme Courts of Wisconsin and Ohio have utterly misinterpreted *R.A.V.* and other decisions by the United States Supreme Court, the people of Wisconsin and Ohio have been deprived of an essential weapon in the fight against racial and ethnic violence that fully comports with the requirements of the First Amendment.

While Petitioners in both cases have ably explained this point, we stress one important issue. As noted above, in *Dawson*, supra, and *Barclay*, supra, the Court made clear that evidence of racial intolerance is a valid factor in sentencing a defendant. In *Payne v. Tennessee*, ___ U.S. ___, 111 S. Ct. 2597 (1991), the Court found that victim impact evidence is a legitimate factor in sentencing.

The *Mitchell* court's flawed reasoning is nowhere more apparent than in its effort to distinguish its holding from *Dawson* and *Barclay*. The thin reed upon which the Wisconsin court bases its remarkable conclusion that the motivation for a crime is "entitled to the full protection of the First Amendment" is that the sentencing factors considered by a judge are somehow accorded greater deference than sentencing factors provided in a statute. The Court stated:

> Of course it is permissible to consider evil motive or moral turpitude when sentencing for a particular crime, but

> it is quite a different matter to sentence for that underlying crime and then add to that criminal sentence a separate enhancer that is directed solely to punish the evil motive for the crime.

Mitchell, 485 N.W. 2d. at 815, n. 17.

Since the end result of both a judge-imposed and a legislature-imposed penalty for a hate crime is an enhanced sentence, the Wisconsin court's argument is a distinction without a difference. As the Petitioner in *Mitchell* points out, the Supreme Court has long held that sentencing is a power shared by the legislative and judicial branches. *Mistretta v. United States*, 488 U.S. 361, 364 (1989).

It *is* "quite a different matter" to include a penalty enhancer in a statute rather than rely on a judge to enhance penalties in sentencing a defendant, but the difference is not what the Wisconsin court had in mind. A defendant accused of selecting his victim because of racial or ethnic animus is afforded far greater procedural safeguards in a legislature-imposed enhanced sentence under ADL's model legislation and the statutes at issue in *Mitchell* and *Wyant* than in a judge-imposed enhanced sentence (as permitted under *Dawson, Payne* and *Barclay*). As opposed to the factors that judges may consider in sentencing, under the ADL model law and the Wisconsin and Ohio statutes, a sentence may only be enhanced if the bias-motive is proven *beyond a reasonable doubt*. Thus, to the extent that there is any difference between what the Supreme Court permits in *Dawson, Payne* and *Barclay* and what legislatures accomplish in enacting hate crime legislation, it is that the legislative approach has the added prophylactic benefit of a higher evidentiary standard.

THE COURT CAN CLARIFY THE BASIS UPON WHICH ANTI-DISCRIMINATION LAWS COMPORT WITH THE FIRST AMENDMENT

A second adverse result of *R.A.V.*'s misinterpretation that can be rectified by the granting of Certiorari in *Mitchell* and *Wyant* is the overriding perception that – from Title VII to the

Fair Housing Act to antidiscrimination laws in education and jury selection – *R.A.V.* renders questionable the constitutionality of the nation's body of anti-discrimination laws. As Justice Bablitch asks in his dissent in *Mitchell*, "How can the Constitution not protect discrimination in the selection of a victim for discriminatory hiring, firing or promotional practices, and at the same time protect discrimination in the selection of a victim for criminal activity?" In his testimony before the House Subcommittee considering the constitutionality of the proposed House Bill on hate crimes, Professor Laurence Tribe noted: "If *R.A.V.* were to cast a constitutional shadow over the Hate Crimes Sentencing Enhancement Act, precisely the same shadow would befall this entire corpus of anti-discrimination law."

The Wisconsin Supreme Court's struggle to reconcile its decision overturning the Wisconsin hate crime law (improperly relying on *R.A.V.*) with state and federal anti-discrimination laws is a prime example of the manner in which anti-discrimination laws have been drawn into the fray over hate crime laws. The court stated:

> We freely admit that antidiscrimination statutes are concerned with the actor's motive, but it is the objective conduct taken in respect to the victim which is redressed (not punished) by those statutes, not the actor's motive.

Mitchell, 485 N.W.2d at 817, n. 21

This reasoning is doubly wrong. Penalty enhancement hate crime legislation is no more concerned with motive and no less concerned with conduct than anti-discrimination laws. In language, structure and application, the laws are completely analogous.[20] Under the Wisconsin law, the penalty is enhanced where the victim is intentionally selected "*because of*" his or her race, religion, color, disability, sexual orientation, national origin or ancestry. Under the Ohio law, the penalty is enhanced

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20. As noted above, ADL's Legal Affairs Department employed the language and structure of federal and state anti-discrimination laws (already upheld as constitutional) in drafting the Model Bill in 1981.

if the victim is selected "*by reason of*" his or her race, color, religion, or national origin. Similarly, Title VII, as amended by § 2000e-2(a)(1), prohibits various employment actions "*because of*" the employee or prospective employee's race, color, religion, sex or national origin. 42 U.S.C. § 3604 prohibits interference with housing choices "*because of* [the victim's] race, color," or other listed status.

Moreover, to rest so important a point on a presumed distinction between "redressing" and "punishing" begs the question. "Punishment" is a form of "redressing;" to say that it is permissible to consider motive when "redressing" conduct, but impermissible where society "punishes" for the same conduct is word play. It is also incorrect, for as Petitioner in *Mitchell* points out, criminal penalties do attach to certain anti-discrimination law violations. Further, under 42 U.S.C. §§ 1981 and 1983, a prevailing plaintiff may, in addition to other remedies, receive punitive damages depending on such factors as the defendant's "evil motive or intent. . . " *Smith v. Wade*, 461 U.S. 30, 56 (1983). "This issue 'typically demands inquiry into the actor's subjective motive and purpose.'" Smith, 461 U.S. at 61-64 (Rehnquist, J., dissenting).

THE COURT CAN RESOLVE A CLEAR AND DIRECT CONFLICT AMONG STATE COURTS ON A SUBSTANTIAL QUESTION OF FEDERAL CONSTITUTIONAL LAW

A third untoward result of *R.A.V.*'s misinterpretation by the Wisconsin and Ohio Supreme Courts that can be remedied by the granting of Certiorari in *Mitchell* and *Wyant* is the direct conflict that now exists between several states on a substantial question of federal constitutional law. States are taking diametrically opposed positions on the application of the First Amendment to hate crime laws.

For example, one day after the Ohio Supreme Court's decision overruling the Ohio hate crime penalty enhancer, the Oregon Supreme Court held that an analogous Oregon law satisfied the requirements of the First Amendment as interpreted in *R.A.V. State v. Plowman*, 314 Ore. 157, ___ P.2d

____, 1992 WL 207677 (1992). The Oregon court expressly disagreed with the reasoning of the Wisconsin court in *Mitchell*.

More recently, a Florida intermediate appellate court held that Florida's hate crime law, also based on the ADL model bill and also similar to the statutes overturned in *Mitchell* and *Wyant*, fully comported with the requirements of the First Amendment and this Court's decision in *R.A.V. Dobbins v. State of Florida*, Case No. 91-1953 (Fla. 5th DCA September 25, 1992).

A New York court has also upheld the constitutionality of a penalty enhancement hate crime law. *People v. Grupe*, 141 Misc. 2d 6, 532 N.Y.S.2d 815 (N.Y. Crim. Ct. 1988).

Cases in which the constitutionality of hate crime laws are at issue are presently pending before intermediate appellate and supreme courts in California, Florida, New Jersey, Michigan, Vermont and the State of Washington.

In sum, the interplay between the First Amendment and hate crime legislation enacted in 46 states is now in a perilous state of flux and turmoil. The situation is intolerable. Certiorari must be granted in *Mitchell* and *Wyant* to guarantee the uniform application of the United States Constitution throughout the nation.

CONCLUSION

For the reasons stated herein, *Amici Curiae* urge the Court to grant Certiorari in *State v. Mitchell* and *State v. Wyant, et al.*

Respectively submitted,

David M. Rain

Counsel for *Amici Curiae*

APPENDIX A: THE AMERICAN JEWISH CONGRESS

The American Jewish Congress is an organization founded in 1918 to protect the civil, political, religious, and economic rights of American Jews. It has long supported the use of the law, including the criminal law, to punish those who would discriminate against American citizens because of their race, religion, sex, sexual orientation, or national origin. Crimes in which the victim is selected because of these suspect grounds tear at the fabric of society. Such offenders must be treated and punished with utmost seriousness.

Because Ohio and Wisconsin's laws are important weapons in the war against violent bigotry, the American Jewish Congress joins in this brief.

APPENDIX B:
THE CENTER FOR WOMEN POLICY STUDIES

The Center for Women Policy Studies (the "CWPS") was established in 1972 as the first independent national public policy research and advocacy institute focused specifically on improving the social, legal, and economic status of women. Underlying all of the Center's work is the premise that sexism and racism must be addressed simultaneously. The Center looks at the impact of combined race- plus-sex bias on women of color, women from diverse socioeconomic backgrounds, women of diverse sexual identities, women with disabilities, and women of different ages. In 1991 the Center published a policy paper, *Violence Against Women as Bias Motivated Hate Crime: Defining the Issues*, participated in coalitions and task forces on hate crimes and the Violence Against Women Act. In September, 1992 the CWPS convened a "Think Tank" to consider the efficacy and legitimacy of defining civil rights remedies for acts of hate violence against women. Based on our concern and interest for individual rights we join in urging the Court to grant the petitions for the writ of Certiorari.

APPENDIX C:
THE FRATERNAL ORDER OF POLICE

The Fraternal Order of Police (FOP) is the nation's largest law enforcement organization; with over 240,000 members throughout the United States. Founded in 1915, the FOP represents professional, full-time officers from all agencies of law enforcement on the federal, state and local levels.

Through the years, the FOP has developed a proud tradition of leadership in national affairs and has a history of commitment to insuring that society as a whole is equally protected under the law.

The FOP believes that hate crimes deprive society of this equal treatment under the law and the nation's law enforcement has more than a mere duty to respond against this bias.

Assisting law enforcement in their endeavor to insure equal treatment under the law are statutes in certain states (31) that provide for penalty enhancement for violations of hate crimes laws. The FOP also believes these penalty enhancement statutes also serve as a deterrent to would-be violators.

The FOP believes that the question raised by the rulings in *State v. Mitchell* and *State v. Wyant* threaten the effective policing of hate crimes which is so important to the order of this nation.

APPENDIX D:
THE HUMAN RIGHTS CAMPAIGN FUND

The Human Rights Campaign Fund is the largest political organization representing gay and lesbian Americans. Hate crimes motivated by the sexual orientation of the victim are on the rise in many major American cities, and the National Institute of Justice has estimated that crimes against gay and lesbian Americans may be the largest category of hate crimes. The Human Rights Campaign Fund and the Americans it represents believe that government must have the tools, such as the laws at issue in this case, to deal effectively with this growing problem.

APPENDIX E:
THE NATIONAL COUNCIL OF JEWISH WOMEN

Founded in 1893, the National Council of Jewish Women ("NCJW") is the oldest Jewish women's volunteer organization in America. NCJW's 100,000 members in more than 200 Sections across the United States keep the organization's promise to dedicate themselves, in the spirit of Judaism, to advancing human welfare and the democratic way of life through a combination of social action, education and community service. Based on NCJW's concern for individual rights and our "National Resolutions," which include working for "the enactment and enforcement of laws and regulations which protect individual rights and civil liberties", we join in urging the Court to grant the petitions for writ of Certiorari.

APPENDIX F:
THE NATIONAL GAY AND LESBIAN TASK FORCE

The National Gay and Lesbian Task Force ("NGLTF") is the oldest national gay and lesbian civil rights advocacy organization in the U.S. Since 1973, NGLTF has worked to eradicate prejudice, discrimination and violence based on sexual orientation and HIV status. Since 1984, NGLTF has noted in its annual audit of anti-lesbian and anti-gay incidents a steady rise in defamation, harassment, violence and attacks. NGLTF supports hate crimes penalty enhancement legislation as part of the overall effort to count and counter crimes which target individuals on the basis of their race, religion, creed, color, sex, national origin or sexual orientation.

NGLTF balances its interest in countering violence against lesbians and gay men with its interest in protecting First Amendment rights. NGLTF has been at the forefront of the fight to support the right of lesbians and gay men to speak their minds and publish their ideas. Indeed, NGLTF is acutely aware that bias violence abridges the First Amendment rights of its victims by making them afraid to assemble and organize.

It is out of these dual interests that NGLTF joins ADL in urging the Court to grant Certiorari in both *Mitchell* and *Wyant* to resolve the confusion and doubt cast by these decisions.

APPENDIX G:
THE NATIONAL INSTITUTE AGAINST PREJUDICE & VIOLENCE

The National Institute Against Prejudice & Violence ("NIAPV"), created in 1984, is the only national center dedicated exclusively to studying and responding to ethnoviolence – psychological and physical violence motivated by race, religion, ethnicity, sexual orientation or gender. While other organizations deal with selected aspects of these problems, NIAPV is unique in its comprehensive approach. NIAPV's landmark social science research is the foundation of training and educational programs addressing the causes and effects of ethnoviolent victimization in communities, schools and workplaces; cultural differences that cause intergroup tension; effective communication and conflict resolution; and the development of procedures for reporting and responding to incidents. NIAPV also acts as a clearinghouse of information on reported incidents of intergroup conflict and model programs of response; tracks the quantity and quality of news media activity; publishes reports and educational materials; and works for the enactment of appropriate legislation.

NIAPV's research clearly establishes both the pervasiveness of ethnoviolence as well as the greater traumatic impact of ethnoviolence on the victim. In a 1987 study of a college campus ("The UMBC Study") NIAPV found that 20 percent of all minority students experienced at least one act of ethnoviolence during the academic year studied. Numerous replications of The UMBC Study at campuses around the country, and analysis of other similar campus research, confirm the 20 percent figure as a conservative estimate of the number of minority students nationwide who are victims of ethnoviolence during an academic year. The traumatic effects of the victimization were found to be often serious and long-lasting.

In 1989, pursuant to a grant from the Ford Foundation, NIAPV conducted the first national study of the prevalence and impact of ethnoviolent victimization in the general population ("The National Victimization Survey"). The findings of this study, based upon telephone interviews completed with 2,078

people in a stratified random sample of the contiguous United States, showed that at least 7 percent of the adult population of the United States were victims of violence or abuse motivated by prejudice during the previous twelve months. The acts involved included actual and threatened physical violence and destruction of property as well as direct, face-to-face insults. The traumatic effect of these acts was substantially greater than the trauma experienced by victims of similar attacks which were not motivated by prejudice. On a scale of nineteen, standard psychophysiological symptoms of stress, victims of ethnoviolence suffered, on average, 21% more of these symptoms than did victims of similar acts of ordinary violence or abuse (5.8 symptoms versus 4.8). Preliminary findings of a recently-completed study of a large corporate setting, funded by the National Institute of Justice, confirm the earlier studies and indicate that ethnoviolence is even more pervasive in the workplace than in the larger community.

NIAPV's research consistently finds that verbal and symbolic expressions of prejudice cause measurable and substantial trauma to their targets. Still, NIAPV has always held that most such expressions, as odious as they are, must be protected by the First Amendment if freedom of speech is to remain a central value of our society. For example, NIAPV believes that group defamation is protected by the First Amendment; and most face-to-face insults and slurs which do not amount to actual threats of violence or "fighting words" are also protected speech. In such cases it is our responsibility to understand who is paying the price to preserve the freedom of speech and to take committed action in other areas to ameliorate the harmful effects on its victims.

Millions of Americans know firsthand the vicious harm inflicted by acts of ethnoviolence, and this is reflected in wide and strong support for the many so-called "hate crime" laws which have been enacted in the states. The recent uprisings in Los Angeles and other cities are truly the tip of a large and explosive iceberg of intergroup tensions and conflict. While the law alone cannot begin to solve these problems, nevertheless it has a critical role to play in combatting their most harmful manifestations. NIAPV believes that the ADL model "hate

crime" statute represents a responsible and effective effort to combat ethnoviolent crimes while protecting the freedom of speech under the First Amendment. The decisions in *State v. Mitchell* and *State v. Wyant* reflect confusion over the appropriate First Amendment standards by which "hate crime" laws should be evaluated. The corrective guidance of this Court is desperately needed.

For the reasons stated above, NIAPV joins ADL in urging the Court to grant the Petitions for Certiorari in *Mitchell* and *Wyant*.

APPENDIX H:
THE NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL

The National Jewish Community Relations Advisory Council (NJCRAC) is an umbrella organization for Jewish community relations in the United States, and consists of the following national member organizations: American Jewish Committee, American Jewish Congress, Anti-Defamation League, B'nai B'rith, Hadassah, Jewish Labor Committee, Jewish War Veterans of the United States of America, National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogue of Conservative Judaism, Women's League for Conservative Judaism, Women's American ORT, as well as 117 community member agencies representing Jewish communities throughout the United States (listed below).

As the national planning and coordinating body for the field of Jewish community relations, NJCRAC is dedicated to preserving and protecting the principles embodied in the Bill of Rights – particularly the First Amendment – and is equally committed to the counteraction of discrimination and bigotry in the society. The NJCRAC believes that this balancing of sometimes conflicting interests, in the larger context of constitutional protections, is an essential bulwark in maintaining the individual, group, and political equality of all Americans.

NJCRAC Constituent Organizations

National Agencies

American Jewish Committee
American Jewish Congress
B'nai B'rith
Anti-Defamation League
Hadassah
Jewish Labor Committee
Jewish War Veterans of the U.S.A.
National Council of Jewish Women
Union of American Hebrew Congregations

Union of Orthodox Jewish Congregations of America
United Synagogue of Conservative Judaism/Women's League for Conservative Judaism
Women's American ORT

Community Agencies*

Alabama

CRC of the Birmingham Jewish Federation

Arizona

CRC of the Greater Phoenix Jewish Federation JCRC of the Jewish Federation of Southern Arizona

California

Jewish Federation of Greater Long Beach and West Orange County
CRC of the Jewish Federation- Council of Los Angeles
JCRC of the Greater East Bay
Jewish Federation of Orange County
JCRC of Sacramento
JCRC of United Jewish Federation of San Diego
JCRC of San Francisco, the Peninsula, Marin and Sonoma Counties
JCRC of Greater San Jose

Connecticut

Jewish Federation of Greater Bridgeport
Jewish Federation of Greater Danbury
Jewish Federation of Eastern Connecticut
CRC of Greater Hartford Jewish Federation
Jewish Federation of Greater New Haven
United Jewish Federation of Stanford
Jewish Federation of Waterbury

Delaware

Jewish Federation of Delaware

District of Columbia

Jewish Community Council of Greater Washington

Florida

Jewish Federation of South Broward
Jewish Federation of Fort Lauderdale
Jacksonville Jewish Federation
Greater Miami Jewish Federation
Jewish Federation of Greater Orlando
Jewish Federation of Palm Beach County
Jewish Federation of Pinelas County
Sarasota-Mantes Jewish Federation
South Palm Beach County Jewish Federation

Georgia

Atlanta Jewish Federation
Savannah Jewish Federation

Illinois

JCRC of the Jewish Limited Fund of Metropolitan Chicago
Jewish Federation of Peoria
Springfield Jewish Federation

Indiana

Indianapolis JCRC
Jewish Federation of St. Joseph Valley

Iowa

Jewish Federation of Greater Des Moines

Kansas

(See Missouri)

Kentucky

Central Kentucky Jewish Federation
Jewish Community Federation of Louisville

Louisiana

Jewish Federation of Greater Baton Rouge
Jewish Federation of Greater New Orleans
Shreveport Jewish Federation

Maine

Jewish Federation Community Council of Southern Maine

Maryland

Baltimore Jewish Council

Massachusetts

JCRC of Greater Boston
Jewish Federation of North Shore
Jewish Federation of Greater New Bedford
Jewish Federation of Greater Springfield
Worcester Jewish Federation

Michigan

Jewish Community Council of Metropolitan Detroit
Flint Jewish Federation

Minnesota

JCRC/Anti-Defamation League of Minnesota and the Dakotas

Missouri

Jewish Community Relations Bureau/American Jewish Committee of Greater Kansas City
St. Louis JCRC

Nebraska

ADL/CRC of the Jewish Federation of Omaha

New Jersey

Federation of Jewish Agencies of Atlantic County

United Jewish Community Bergen County/North Hudson
Jewish Federation of Central New Jersey
Jewish Federation of Clinton-Passaic
MetroWest United Jewish Federation
Jewish Federation of Greater Middlesex County
JCRC Jewish Federation of North Jersey
JCRC of Southern New Jersey
Jewish Federation of Mercer and Bucks Counties

New Mexico

Jewish Federation of Greater Albuquerque

New York

Jewish Federation of Broome County
Jewish Federation of Greater Buffalo
Elmira Jewish Welfare Fund Jewish Federation of Greater Kingston
JCRC of New York
United Jewish Federation of Northeastern New York
Jewish Federation of Greater Orange County
Jewish Community Federation of Rochester
Syracuse Jewish Federation
Utica Jewish Federation

Ohio

Akron Jewish Community Federation
Canton Jewish Community Federation
Cincinnati JCRC
Cleveland Jewish Community Federation
CRC of the Columbus Jewish Federation
JCRC of the Jewish Federation of Greater Dayton
CRC of the Jewish Federation of Greater Toledo
JCRC of Youngstown Area Jewish Federation

Oklahoma

Jewish Federation of Greater Oklahoma City
Jewish Federation of Tulsa

Oregon

Jewish Federation of Portland

Pennsylvania

CRC of the Jewish Federation of Allentown
Erie Jewish Community Council
CRC of the United Jewish Federation of Greater Harrisburg
JCRC of Greater Philadelphia
CRC of the United Jewish Federation of Pittsburgh
Scranton-Lackawanna Jewish Federation
Jewish Federation of Greater Wilkes-Barre

Rhode Island

CRC of the Jewish Federation of Rhode Island

South Carolina

Charleston Jewish Federation
Columbia Jewish Federation

Tennessee

JCRC of the Memphis Federation Council
Jewish Federation of Nashville and Middle Tennessee

Texas

Jewish Federation of Austin
Jewish Federation of Greater Dallas
JCRC of the Jewish Federation of El Paso
Jewish Federation of Fort Worth and Tarrant County
CRC of the Jewish Federation of Greater Houston
JCRC of the Jewish Federation of San Antonio

Virginia

United Jewish Community of the Virginia Peninsula
Jewish Community Federation of Richmond
United Jewish Federation of Tidewater

Washington

Jewish Federation of Greater Seattle

Wisconsin

Madison Jewish Community Council
Milwaukee Jewish Council

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*"CRC" – Community Relations Committee or Council; "JCRC" – Jewish Community Relations Council

APPENDIX I:
THE NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES

The National Organization Of Black Law Enforcement Executives ("NOBLE") is a non-profit organization of police chiefs, agency heads, command-level law enforcement officials and criminal justice educators whose membership is numbered at approximately 2400. NOBLE's goals are to develop, implement and manage innovative ideas, concepts and programs aimed at reducing violence, crime, and the elimination of racism in the criminal justice arena. NOBLE was founded in September, 1976, during a three day symposium co-sponsored by the Police Foundation and the Law Enforcement Assistance Administration (LEAA).

Consistent with its motto, "Justice by Action," NOBLE aggressively pursues its goalsz by conducting substantive research, speaking out on the issues and performing a variety of outreach activities. NOBLE's success in this arena is reflected by its growth and the major role it has played, and continues to play, in shaping policy in areas of vital importance to minorities and the law enforcement community. NOBLE has effectively used the judicial process and direct correspondence to express opinions and concerns. NOBLE has endorsed strategies that provide a holistic approach to crime and violence and proactive policy- community involvement.

What has come to be known as hate violence, racial and religious violence and harassment was first researched by NOBLE in 1983. NOBLE received funding from the National Institute of Justice (NIJ) to do research on the problem and to develop model policies and procedures for law enforcement agencies.

As a result, NOBLE published a law enforcement handbook that outlines a model response to racial and religious violence which is used broadly by the law enforcement community and social service practitioners. NOBLE provided education and advocacy that resulted in the passage of federal legislation requiring the collection of data on the occurrence of hate violence incidents. With a grant from the Ford Foundation,

NOBLE has drafted a training program and produced a videotape for law enforcement workers on racial violence entitled *Hate Crime: a Policy Perspective* aimed at training police officers in effective procedures for handling hate crimes. In addition, NOBLE has developed a training curriculum to deal with cultural clashes on college campuses. The curriculum is designed to sensitize college administrators, students and law enforcement personnel to the issue of racism.

Consequently, NOBLE joins the ADL in urging the Court to grant Certiorari in State v. Mitchell and *State v. Wyant*.

APPENDIX J:
THE ORGANIZATION OF CHINESE AMERICANS

Founded in 1973, The Organization of Chinese Americans, Inc. ("OCA") is one of the largest national Chinese American organizations seeking equal rights and equal protection under the law. With 42 chapters nationwide and over 5,000 members, OCA is committed to developing the full participation of Asian Americans in the American political process.

Due to the increasing incidence of anti-Asian violence, OCA has worked extensively with other organizations toward the elimination of hate crimes through legislative, educational, and community efforts. Based on OCA's concern for civil rights, we join in urging the court to grant the petitions for the writ of Certiorari.

APPENDIX K:
THE POLICE EXECUTIVE RESEARCH FORUM

The Police Executive Research Forum ("PERF") is a national organization of police executives from large- and medium-sized jurisdictions dedicated to promoting progressive policing through research, education, debate and national leadership.

Because of our commitment to protecting all persons equally under the law and the devastation that hate crimes can wreak on victims and their communities, PERF believes that the police community should aggressively seek out and respond to bias crime incidents. One tool police in 31 states now have to combat hate crime is the penalty enhancement statute. Penalty-enhancement statutes send a strong message to the public that law enforcement authorities take hate crimes very seriously and that perpetrators will face considerable punishment. We believe that penalty-enhancement statutes, when used as part of a comprehensive approach to hate crime, are effective and important tools – tools that are now in question as a result of the rulings in *State v. Mitchell* and *State v. Wyant*.

APPENDIX L:
THE SOUTHERN POVERTY LAW CENTER

The Southern Poverty Law Center is a non-profit organization founded in 1971 to protect the rights of poor people and minorities. Its attorneys have litigated numerous human and civil rights cases in federal and state courts across the country, including cases focusing on racial and sexual discrimination, voting rights, capital punishment, and racial violence.

In 1979, the Center established the Klanwatch Project to monitor the activities of white supremacist organizations and individuals throughout the United States. Klanwatch has been instrumental in providing federal and state law enforcement authorities with substantial assistance in combatting and prosecuting hate crimes and has developed the largest intelligence base on white supremacist groups that exists in this country. Using that data base, the Center itself has brought many successful civil lawsuits against white supremacist groups and their members. *See, e.g., Berhanu v. Tom Metzger, et al.,* No A-8911-07007 (Ore. Cir. Ct.) (civil section against the White Aryan Resistance and its leaders and agents for the beating death of an Ethiopian student in Oregon); *Person v. Miller*, 854 F.2d 656 (4th Cir. 1988) (criminal contempt proceeding against Klan members violating a court order against paramilitary activities); *McKinney v. Southern White Knights*, No C87-565-CAM (N.D. Ga. 1988) (civil action against Klan groups and individuals for assaulting peaceful civil rights marchers); *Donald v. United Klans of America*, No. 84-0725 (S.D. Ala. 1987) (civil action on behalf of family of black man lynched by Klan); *Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan*, 518 F.Supp. 993 (S.D. Tex. 1981) (injunction issued ordering Klan to stop harassing Vietnamese fishermen in Galveston Bay).

The Southern Poverty Law Center is deeply concerned about the steady rise in hate crimes by various fringe groups and white supremacist organizations, and believes that the interest of law enforcement would be greatly served by the Court's grant of *certiorari* in this case to resolve the uncertainties created as a result of the decision in *R.A.V. v. City of St. Paul, Minnesota,* ___ U.S. ___, 112 S. Ct. 2538 (1992).

APPENDIX M:
THE UNITED STATES CONFERENCE OF MAYORS

The United States Conference of Mayors is a not-for-profit organization organized under the laws of the State of Illinois, with its offices in Washington, D.C. The organization represents approximately 1,000 mayors of cities with a population of over 30,000, assuring that the interests of cities are represented in the development of national public policy and providing information and assistance to mayors and other city officials on a variety of urban issues.

The United States Conference of Mayors joins the ADL in urging the Court to grant Certiorari in *Mitchell* and *Wyant*.